

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Division of Hospitals and Provider Operations

(Amendment)

907 KAR 1:360. Preventive and remedial public health services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 431.615

STATUTORY AUTHORITY: KRS 194A.030(2)(~~3~~), 194A.050(1), 205.520(3), 42 U.S.C. 1396a, b, c, d, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to preventive and remedial public health services provided through the Department for Public Health and the method of reimbursement for these services by the Kentucky Medicaid Program.

Section 1. Definitions.

(1) "Add-on code" means a designated CPT code which may be used in

1 conjunction with another CPT code to denote that an adjunctive service has been
2 performed.

3 ~~(2) ["Billable unit" means a covered service designated by a unique CPT code.~~

4 ~~(3)~~ "CPT code" means a code used for reporting procedures and services
5 performed by physicians or other licensed medical professionals which is published
6 annually by the American Medical Association in Current Procedural Terminology.

7 ~~(3)~~ ~~(4)~~ "Department" means the Department for Medicaid Services or its
8 designated agent.

9 (4) ~~(5)~~ "Incidental" means that a medical procedure:

10 (a) Is performed at the same time as a more complex primary procedure; and

11 (b)1. Requires few additional physician resources; or

12 2. Is clinically integral to the performance of the primary procedure.

13 ~~(5)~~ ~~(6)~~ "Integral" means that a medical procedure represents a component of a
14 more complex procedure performed at the same time.

15 ~~(6)~~ ~~(7)~~ "KenPAC" means the Kentucky Patient Access and Care System.

16 ~~(7)~~ ~~(8)~~ "KenPAC PCP" means a Medicaid provider who is enrolled as a primary
17 care provider in the Kentucky Patient Access and Care System.

18 ~~[(9) Medicaid Physician Fee Schedule" means a list of current reimbursement~~
19 ~~rates and procedure codes for physician services established by the department in~~
20 ~~accordance with 907 KAR 3:010, Section 3.]~~

21 ~~(8)~~ ~~(10)~~ "Medically necessary" or "Medical necessity" means a covered benefit
22 is determined to be needed in accordance with 907 KAR 3:130.

23 ~~(9)~~ ~~(11)~~ "Mutually exclusive" means that two (2) procedures:

1 (a) Are not reasonably performed in conjunction with one (1) another during the
2 same patient encounter on the same date of service;

3 (b) Represent two (2) methods of performing the same procedure;

4 (c) Represent medically impossible or improbable use of CPT codes; or

5 (d) Are described in current procedural terminology as inappropriate coding of
6 procedure combinations.

7 (10) "Relative Value Unit" or "RVU" means the Medicare-established value
8 assigned to a CPT code which takes into consideration the physician's work, practice
9 expense, and liability insurance.

10 (11) [(12)] "Screening" means the evaluation of a recipient by a physician to
11 determine:

12 (a) The presence of a disease or medical condition; and

13 (b) The necessity of further evaluation, diagnostic tests or treatment.

14 Section 2. Participation Requirements. (1) The Department for Public Health shall
15 comply with the terms and conditions established in the following administrative
16 regulations:

17 (a) 907 KAR 1:005, Nonduplication of payments;

18 (b) 907 KAR 1:671, Conditions of Medicaid provider participation; withholding
19 overpayments, administrative appeal process, and sanctions; and

20 (c) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for
21 Medicaid participation.

22 (2) The Department for Public Health shall comply with the requirements
23 regarding the confidentiality of personal medical records as mandated by 42 U.S.C.

1320d and 45 C.F.R. Parts 160 and 164.

Section 3. Covered Services. The following medically-necessary preventive, screening, diagnostic, rehabilitative and remedial services provided by the Department for Public Health directly or indirectly through its subcontractors shall be covered:

(1) A chronic disease service;

(2) A communicable disease service;

(3) An early and periodic screening, diagnosis, and treatment (EPSDT) service;

(4) A family planning service;

(5) A maternity service; or

(6) A pediatric service.

Section 4. Service Limitations.

(1) A laboratory procedure shall be limited to a procedure for which the provider has been certified in accordance with 42 C.F.R. Part 493.

(2) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F shall be covered within the scope and limitations of these federal regulations.

(3) Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(4) Except for a service specified in 907 KAR 1:320, Section 10(3)(a) through (q), a referral from the KenPAC PCP shall be required for a recipient enrolled in the KenPAC Program.

Section 5. Reimbursement.

(1) Payment for a preventive health service specified in Section 3(1) through (6)

of this administrative regulation shall be calculated by multiplying the current Medicare conversion factor for Kentucky by the non-facility relative value unit weight for the procedure code. [:

~~(a) If provided by a physician, the reimbursement amount for the service specified in the Medicaid Physician Fee Schedule;~~

~~(b) If provided by a physician assistant or advanced registered nurse practitioner, a rate calculated at seventy-five (75) percent of the fee specified in the Medicaid Physician Fee Schedule; or~~

~~(c) If provided by a licensed nurse, a rate calculated at sixty (60) percent of the fee specified in the Medicaid Physician Fee Schedule.]~~

(2) For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

(3) If a copayment is required in accordance with 907 KAR 1:604, reimbursement shall be reduced by the amount of the copayment.

(4) If performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(5) Except for an applicable add-on code, reimbursement for an anesthesia service shall be limited to one (1) CPT code and one (1) unit of anesthesia per operative session.

(6) Reimbursement for a surgical procedure shall include the following:

(a) A preoperative service;

(b) An intraoperative service;

(c) A postoperative service and follow-up care:

1. Within ninety (90) days following the date of major surgery; or

2. Within ten (10) days following the date of minor surgery; and

(d) A preoperative consultation performed within two (2) days of the date of the surgery.

Section 6. ~~[Supplemental Payments. In addition to a payment made pursuant to Section 5 of this administrative regulation, the department shall make a monthly supplemental payment which shall be the lesser of:~~

~~(1) An amount specified in an interagency agreement between the Department of Public Health and the department; or~~

~~(2) An amount which is the difference between:~~

~~(a) The most recently submitted state fiscal year costs as substantiated by local health department cost reports; and~~

~~(b) The amount of reimbursement generated by that state fiscal year's billable units based upon reimbursement rates assigned to the CPT codes in the Medicaid Physician Fee Schedule.~~

Section 7.] Audits.

(1) The Department for Public Health or subcontracting local health departments shall provide to the Department for Medicaid Services or a representative of an agency or office listed in subsection (2) of this section, upon request:

(a) Information maintained by the provider to document the service provided;

(b) Information regarding a payment claimed by the provider for furnishing a service; or

1 (c) Information documenting the cost of the service.

2 (2) Access to provider or subcontractor records relating to a service provided
3 shall be required for:

4 (a) A representative of the United States Department of Health and Human
5 Services;

6 (b) The United States Centers for Medicare and Medicaid Services;

7 (c) The United States Attorney General's Office;

8 (d) The state Attorney General's Office;

9 (e) The state Auditor's office;

10 (f) The Office of the Inspector General; or

11 (g) An agent or representative as may be designated by the Secretary of the
12 Cabinet for Health Services.

13 Section 7 [8]. Appeal Rights.

14 (1) An appeal of a department decision regarding a Medicaid provider based
15 upon an application of this administrative regulation shall be in accordance with 907
16 KAR 1:671.

17 (2) An appeal of a department decision regarding a Medicaid recipient based
18 upon an application of this administrative regulation shall be in accordance with 907
19 KAR 1:563.

20 (3) An appeal of a department decision regarding Medicaid eligibility of an
21 individual shall be in accordance with 907 KAR 1:560.

907 KAR 1:360

REVIEWED:

Date

Shannon Turner, J.D., Commissioner
Department for Medicaid Services

Date

Duane L. Kilty, Jr., Ph.D.
Undersecretary for Administration and Fiscal Affairs

APPROVED:

Date

James. W. Holsinger, Jr., M.D., Secretary
Cabinet for Health and Family Services

A public hearing on this administrative regulation shall, if requested, be held on June 21, 2005, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2005, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business July 1, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:360

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Teresa Goodrich or Stuart Owen (564-6204)

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the coverage criteria and reimbursement methodology for the provision of preventive and remedial public health services.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Cabinet to promulgate, administer and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.520(3) authorizes the Cabinet to promulgate administrative regulations which take advantage of federal funds available for the provision of medical assistance. This administrative regulation establishes policies for the preventive and remedial public health service program which qualifies for federal funds available for medical assistance.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria for the provision of preventive and remedial public health services to Medicaid recipients and establishes the reimbursement methodology for these services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment implements a reimbursement methodology for payment of a preventive and remedial health service based upon the current Medicare conversion factor for Kentucky and the non-facility relative value unit for the procedure code.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish a reimbursement methodology which meets the approval of the Centers for Medicare and Medicaid Services.
- (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by setting standards for the state agency that administers public health services to allow for coverage and reimbursement of these services to Medicaid recipients.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by

implementing a reimbursement methodology that meets the approval of the Centers for Medicare and Medicaid Services.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation may potentially the Department for Public Health, all local health departments and their subcontractors.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above providers will be reimbursed for preventive and remedial public health services provided to the eligible Medicaid population based on the current Medicare conversion factor for Kentucky and the non-facility relative value unit weight.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: Budget Neutral
 - (b) On a continuing basis: Same
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of revenue to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

Reg No: 907 KAR 1:360

Agency: Cabinet for Health Services
Department for Medicaid Services

Contact: Stuart Owen or Teresa Goodrich (564-6204)

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment will affect only local health departments.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to coverage of services provided by local health departments to Medicaid eligible recipients.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):

There is no anticipated impact upon the revenues of local government due to the implementation of this administrative regulation. The new payment system is designed to be budget neutral for local health departments.